284142

Duke, Daphne

From: Cooper, J. Ashley <ashleycooper@parkerpoe.com>
Sent: Thursday, April 11, 2019 10:01 PM
To: 'Carrie Schurg' <caschurg@AustinRogersPA.com>; Minges, Josh <Josh.Minges@psc.sc.gov>
Cc: Richard Whitt <rlwhitt@austinrogerspa.com>; Matthew Gissendanner <matthew.gissendanner@scana.com>
Subject: [External] RE: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar

Josh:

While my client does not wish to engage in a flurry of back-and-forth emails, SCE&G wants to avoid any further misunderstanding.

Beulah Solar and Eastover Solar initiated these actions. Both Beulah and Eastover failed to comply with their respective Interconnection Agreements ("IAs") by making their initial Milestone Payments 1. Further, neither Beulah nor Eastover received injunctive relief -- such as a Commission order staying the requirements to make the Milestone Payments. Therefore, both IAs terminated in accordance with the terms of the IAs. This is not SCE&G trying to "invade the province of the Commission." This is simply reading and applying the basic words of the IAs as executed by Beulah and Eastover.

Beulah and Eastover advanced explanations for their respective contractual breaches. Both companies maintain that their failure to perform was related to or because of curtailment provisions contained in their respective IAs. Beulah and Eastover were aware of this language prior to entering into the IAs. SCE&G has correctly pointed out that neither Beulah's IA or Eastover's IA excuses the failure to make Milestone Payment 1, or any of the Milestone payments. Therefore, notwithstanding Beulah's and Eastover's claims that the curtailment language prevented them from obtaining financing (claims SCE&G disputes and properly propounded discovery to examine), these claims do not excuse or otherwise provide defenses for their breaches.

The above notwithstanding, both Beulah and Eastover are before the Commission asking the Commission to revive their expired IAs and rewrite the Milestone dates. Additionally, Beulah and Eastover may want (but they can't say for certain at this time) the Commission to amend the curtailment language they negotiated and agreed to. Beulah and Eastover claim the curtailment language which they negotiated and agreed to (and on information and believe agreed to for prior projects) was not approved by the Commission. This argument however ignores and attempts to distract from the clear fact that when the Commission adopted the standard IA, the Commission approved open Appendices that the parties would complete. The Commission intentionally allowed parties to included details unique to a particular project. Thus, despite Beulah's and Eastover's repeated claims, the Appendices for both IAs were negotiated and completed in accordance with the Commission's approved approach.

Despite bringing these claims, Beulah and Eastover seek to avoid all discovery that would allow SCE&G to explore the allegations. Mr. Whitt states below, " If the Company had not included "curtailment language", (not approved by this Commission), in its IAs, my clients would have been able to move forward and finance their projects." While Mr. Whitt makes these bald proclamations, his client is unwilling to participate in legitimate discovery geared towards evaluating the veracity of these claims. To be clear, SCE&G's efforts to conduct discovery on these very statements is met with objection and obstruction. Beulah and Eastover cannot simply make assertions and then cry foul when SCE&G propounds discovery to evaluate these statements. There is no court of law or equity or other administrative body that simply allows a party to initiate an action, receive relief without engaging in discovery and proving up their claims.

We now find ourselves at a point where neither Beulah nor Eastover have IAs. Additionally, and somewhat ironically, neither Beulah nor Eastover want to engage in discovery or otherwise prosecute their cases. Basic fairness, however, dictates one of two possible courses of action:
1. the parties engage in discovery now and continue towards resolution in an efficient and expedient manner so as to not cause further delay and expense (beyond what SCE&G has already realized); or
2. Eastover and Beulah withdraw their motions to amend and motions to maintain status quo. The IAs are already terminated so they do not hurt their position. If they make a determination that one or both projects will become viable, they can later petition this Commission to revive their IAs. SCE&G reserves all its rights with respect to such effort.

SCE&G is indifferent to either option, but respectfully requests that the Commission end the current state of convenient limbo where neither Beulah nor Eastover participates in the prosecution of their cases and instead continues to insert arguments that plead for the Commission to just give them their cake and allow them to eat it too.

Regards,
Ashley

J. Ashley Cooper
Partner

Parker Poe

200 Meeting Street | Suite 301 | Charleston, SC 29401-3156
Office: 843.727.2674 | Fax: 843.727.2680 | vcard | map

Visit our website at
www.parkerpoe.com
From: Carrie Schurg [mailto:caschurg@AustinRogersPA.com]
Sent: Thursday, April 11, 2019 2:55 PM
To: Josh Minges (Josh.Minges@psc.sc.gov)
Cc: Richard Whitt; Cooper, J. Ashley; GISSENDANNER, MATTHEW W
Subject: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar

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This email was dictated by Richard Whitt:

Josh:

This email is responsive to the Company's email below.

1. Once again, I must point out that the Interconnection Agreements, ("IAs") at dispute in this pending Dockets, are **not terminated**, unless the Company has invaded the province of this Commission and making a final determination on a matter, still pending before the Commission. Specifically, my clients two Requests for Modification and their Motions to Maintain Status Quo, were filed prior to the due dates of Milestone Payment #1, in the IAs and this Commission has jurisdiction to decide this matter. For the Company to say that the "IAs have been terminated" is the Company's attempt to equate an "argument" with a "fact".

2. It is important to note that my clients' Motion for Protection (for both Beulah Solar and Eastover Solar), was e-filed with this Commission on **February 22, 2019**. The Company's two Motions to Compel were filed on March 3, 2019 and March 12, 2019, respectively. My clients' Motion for Protection was timely filed before the responsive

due date of any of the Company's discovery. Because my clients' Motion for Protection was timely filed, that Motion should be heard prior to the Company's later filed Motions to Compel. From a legal and procedural standpoint, the Motions to Compel cannot be heard prior to my Clients' Motion for Protection, the granting of which will moot the Company's Motions.

3. As for the Company's statement that this dispute has nothing to do with the "curtailment language", my clients disagree. If the Company had not included "curtailment language", (not approved by this Commission), in its IAs, my clients would have been able to move forward and finance their projects.

Regards,
Richard Whitt.

From: GISSENDANNER, MATTHEW W <MATTHEW.GISSENDANNER@scana.com>
Sent: Thursday, April 11, 2019 1:36 PM
To: Josh Minges (Josh.Minges@psc.sc.gov) <Josh.Minges@psc.sc.gov>
Cc: Richard Whitt <rlwhitt@AustinRogersPA.com>; Snowden, Ben (BSnowden@kilpatricktownsend.com) <BSnowden@kilpatricktownsend.com>; ashleycooper@parkerpoe.com; Carrie Schurg <caschurg@AustinRogersPA.com>
Subject: RE: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar

Josh:

Please note that I have corrected "PPAs" to "IAs" in the second paragraph. The IAs were terminated not the PPAs.

Matt

Josh:

If Mr. Whitt and his clients are unwilling to work toward resolution of the discovery issues as directed by the Standing Hearing Officer Directive, dated March 18, 2019, SCE&G respectfully requests that the Commission re-establish the testimony deadlines and hearing date and rule on the Company's motions to compel discovery. SCE&G's discovery in this matter is entirely proper. Alternatively, if Mr. Whitt and his clients continue to desire not to move forward with these two matters that they (not SCE&G) initiated, the Company respectfully requests that the Commission grant the Company's presently pending motion to dismiss in each of these dockets.

The IAs were terminated for Beulah's and Eastover's failure to make a required milestone payment, not for anything to do with the "curtailment language.' As such, the "stakeholder process" is not going to lead to a reactivation of Mr. Whitt's clients' terminated IAs as nothing in the stakeholder process will cure Mr. Whitt's clients' failure to make such payments when due.

Matt

From: GISSENDANNER, MATTHEW W (SEG Services - 6)
Sent: Thursday, April 11, 2019 1:27 PM
To: Josh Minges (Josh.Minges@psc.sc.gov) <Josh.Minges@psc.sc.gov>
Cc: Richard Whitt <rlwhitt@AustinRogersPA.com>; Snowden, Ben (BSnowden@kilpatricktownsend.com) <BSnowden@kilpatricktownsend.com>; ashleycooper@parkerpoe.com; Carrie Schurg <caschurg@AustinRogersPA.com>
Subject: RE: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar
Importance: High

Josh:

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The PPAs were terminated for Beulah's and Eastover's failure to make a required milestone payment, not for anything to do with the "curtailment language.' As such, the "stakeholder process" is not going to lead to a reactivation of Mr. Whitt's clients' terminated PPAs as nothing in the stakeholder process will cure Mr. Whitt's clients' failure to make such payments when due.

Matt

From: Carrie Schurg <caschurg@AustinRogersPA.com>
Sent: Thursday, April 11, 2019 1:13 PM
To: Josh Minges (Josh.Minges@psc.sc.gov) <Josh.Minges@psc.sc.gov>
Cc: Richard Whitt <rlwhitt@AustinRogersPA.com>; Snowden, Ben (BSnowden@kilpatricktownsend.com) <BSnowden@kilpatricktownsend.com>; ashleycooper@parkerpoe.com; GISSENDANNER, MATTHEW W (SEG Services - 6) <MATTHEW.GISSENDANNER@scana.com>
Subject: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar
Importance: High

***This is an EXTERNAL email from Carrie Schurg (caschurg@austinrogerspa.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

This email was dictated by Richard Whitt:

Josh:

1. I write to you concerning the April 15, 2019 meeting that was previously scheduled in this matter.

2. The Order holding this Docket in Abeyance, referenced discovery issues and the stakeholder process that began on March 7, 2019.

3. **As for Discovery Issues** – My clients, upon reflection, do not see any basis for settlement of discovery issues. As I wrote in my April 8, 2019 email, "The nexus for Beulah Solar/Eastover Solar's Request for Modification was Beulah Solar/Eastover Solar's allegations of wrong doings by the Company [the Company's use of unapproved 'curtailment language' in its Interconnection Agreements] and no amount of punitive discovery propounded by the Company to Beulah Solar/Eastover Solar will assist this Commission in its determination of the Company's improper actions."

4. **As for the Stakeholder Process** – The Company and the South Carolina Solar Business Alliance, Inc., are both participating in the stakeholder process, which began March 7, 2019, with the initial meeting. I am happy to report that the second meeting in the stakeholder process has been **scheduled for April 29, 2019** from 10:00 a.m., until 1:30 p.m. ORS and the Company are fully engaged in the stakeholder process and my clients are very hopeful that the conclusion will lead to modifications of the "curtailment language" currently utilized by the Company in its IAs, which will lead to this Docket being administratively closed, without further expense to the parties.

5. Based on the foregoing, I do not believe that the meeting on April 15, 2019, will be worthwhile and in the event this meeting should still be held, I request that the meeting be held by telephone, to avoid Ashley having to travel to Columbia to Charleston and to lessen the expense to my clients.

6. Please advise and this email is,

Respectfully Submitted,
Richard Whitt,
Ben Snowden,
As Counsel for Beulah Solar, LLC and
Eastover Solar LLC.